IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4747 of 1999

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MEHSANA DISTRICT CO OP MILK PRODUCERS SOCIETY LTD. - Petitioner(s)

Versus

PRAVINCHANDRA RASIKLAL SHAH - Respondent(s)

==========

Appearance :

MR AJAY R MEHTA for Petitioner(s) : 1,

MR PRAKASH K JANI for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/02/2006

CAV JUDGMENT

1.0 This petition is directed against the award passed by the Labour

Court, Kalol, dated 15th March 1999 passed in Reference (LCK) no.376 of 1993 whereby the petitioner was directed to reinstate the respondent on service with full back wages.

2.0 The facts, in short, as emerging from the record are as under:

2.1 The respondent was appointed as an Accountant with the petitioner society. In the year 1992 the respondent was transferred as Superintendent in the Veterinary Cross Breeding Section where he joined on the said post. On 8th February 1993 the respondent allegedly abused his superior officer in the office premises and used abusive and filthy languages against his superior in presence of various employees. In pursuance of the same the respondent was discharged from service after giving one month's notice pay. The respondent has encashed the cheque given towards 30 days' notice pay without any objection.

2.2 The respondent, thereafter, raised a dispute which was ultimately referred to Labour Court, Kalol, which was numbered as Reference (LCK) No.376 of 1993. After hearing the parties the Labour Court passed an award directing reinstatement of the respondent with full back wages and costs which is challenged in the present petition.

3.0 Learned counsel for the petitioner raised the following contentions:

3.1 That the respondent was serving as a Superintendent and was not a workman and hence was not entitled to invoke jurisdiction of the Labour Court under the provisions of the Industrial Disputes Act.

3.2 That since the respondent has been discharged simplicitor, there was no question of any charge-sheet being drawn or formal enquiry is being required to be held against the respondent.

3.3 That since the respondent was discharged from services by giving one month's notice and had accordingly paid notice pay which has been accepted by the respondent, he was not entitled to any of the claims.

3.4 That the petitioner had proved before the Labour Court by examining various witnesses, the fact that the respondent had abused his superior officer and had used filthy language in the office premises in presence of various employees against his superior officer, which disentitle him to any claim.

3.5 That since the allegation was conclusively proved before the

Labour Court, the mere fact that formal enquiry was not held was of no consequences.

4.0 Mr. Ajay Mehta for the petitioner, in support of his contention, relied upon the following decisions:

4.1 In the case of Burn & Co. Vs. Their Employees, reported in 1957 SC 38 it is observed that though no chargesheet was formally drawn up against the workman, that would not vitiate the order of dismissal if he knew what the charge against him was and had an opportunity of giving his explanation.

4.2 In the case of Workmen Vs. Motipur Sugar Factory, reported in AIR 1965 SC 1803 it is held that the scope of reference was wide enough to entitle Tribunal to investigate reasons for discharge.

4.3 In the case of Jai Bhagwan Vs. Ambala Central Coop. Bank, reported in (1983)4 SCC 611 it is held that the Tribunal adjudicating a dispute under reference must apply its mind to the facts of the case and failure to do so would vitiate the award.

4.4 In the case of S.E & Stamping Works Vs. Workmen, reported in AIR 1963 SC 1914 wherein the Supreme Court observed that charge can be proved before the Labour Court.

4.5 In the case of Workmen Vs. Bharat Fritz Werner (P) Ltd., reported in (1990)3 SCC 565 the Apex Court had decided that on the facts of the case in lieu of reinstatement, compensation for loss of future employment may be granted.

4.6 In the case of O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd., reported in (1986)4 SCC 337 it is held that having regard to 8 years' service left at the time of illegal termination as also other factors, compensation equivalent to 3.33 years' salary including allowances besides provident fund and retirement benefits as well as costs would be proper.

4.7 In the case of Karnataka State Road Transport Corporation Vs. Lakshmidevamma, reported in AIR 2001 SC 2090 it is held that right of the employer to adduce additional evidence in justification of action taken has to be reserved in application made by employer under S.33 or in objection filed to reference made under section 10 and right cannot be

exercised at any time thereafter.

4.8 In the case of Workmen V.Firestone Typre and Rubber Co., reported in (1973)1 SCC 813, it is held that if the misconduct is established either by managerial enquiry or by evidence before Industrial Tribunal, the punishment cannot be interfered with except when it so harsh as to suggest victimization. If the dismissal order is set aside, then whether workers should be reinstated or paid compensation was within the discretion of the Industrial Tribunal.

4.9 In the case of Mahindra and Mahindra Ltd. Vs. N.B.Narawade, reported in (2005)3 SCC 134 it is held that discretion can be exercised in the cases of (1) punishment being so disproportionate to gravity of misconduct so as to disturb conscience of court, or (2) existence of any mitigating circumstances which require reduction of the sentence, or (3) past conduct of workman which may persuade Labour Court to reduce punishment. It the case of the respondent using abusive language on more than one occasion against superior officer in front of his subordinate, and having been charge-sheeted more than once on earlier occasions, including for causing grievous injury to a co-worker (for which he had been punished only with four days' suspension), it is held that

none of the grounds for interference under section 11-A were attracted.

4.9 In the case of M/s Hindustan Steels Ltd Vs. A.K. Roy and others, reported in AIR 1970 SC 1401 it is held that in case of illegal discharge or dismissal of workman awarding compensation instead of reinstatement is discretionary. On the facts of the case it was held that compensation for a period of two years at the rate of salary last drawn by the concerned workman would meet the ends of justice.

4.10 In the case of Anil Kumar Chakraborty and Another Vs. M/s Saraswatipur Tea Company Ltd., reported in (1982)2 SCC 328 it is held that where an employee holding position of trust and confidence is dismissed from service for Management's loss of confidence in him, payment of compensation and not reinstatement would be the adequate relief.

4.11 In the case of Sant Raj and Anr. Vs. O.P. Singla and Anr, reported in (1985)2 SCC 349, on the facts of the case a total compensation of Rs.2 lacs were awarded. Similar view has been taken in the case of Chandulal Vs. Management of M/s Pan American World Airways Inc., reported in (1985)2 SCC 727 wherein also compensation in the sum of

Rs.2 lacs was awarded. Similarly in the case of Shriram Refrigeration Industries Vs. Hon'ble Add. Industrial Tribunal-cum-Addl Labour Court, Hyderabad and others, the apex Court has decided compensation in lieu of reinstatement at Rs.2,25,000/-.

4.12 In the case of Surjit Ghosh Vs. Chairman & managing Director, United Commercial Bank and others, reported in (1995)2 SCC 474 it is held that since a huge amount of Rs.20 lakhs would have been payable out of the public money without work, notwithstanding expression of loss of confidence by the bank, the plea for paying compensation in lieu of reinstatement was rejected rejected and directed reinstatement with a sum of Rs.50000/- in lieu of arrears of salary with continuity of service and without loss of seniority.

4.13 In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in (2005)5 SCC 501 it is held that there is no rule of thumb that in every case where Industrial Tribunal gives finding that termination of service was in violation of S.25F, ID Act, 1947, entire back wages should be awarded and order for payment of back wages should not be passed in a mechanical manner but a host of factors have to be considered. On the facts of the case the workman is not entitled to

payment of any back wages.

4.14 In the case of Madurantakam Coop. Sugar Mills Ltd. Vs. Viswanathan, reported in (2005)3 SCC 193, in view of the financial crisis faced by the Mills full back wages were reduced to 50%.

5.0 Mr. P.K. Jani, learned counsel appearing for the respondent workman submitted that the respondent was a permanent workman and in the order of discharge simplicitor, retrenchment compensation under section 25F of the Act was not paid. He submitted that no inquiry before passing the order of termination was held. Mr. Jani submitted that the petitioner has not terminated the services of the respondent workman on the ground of any misconduct, but the services of the respondent were terminated by issuing the order of discharge simplicitor.

5.1 He submitted that the petitioner cannot be permitted to improve upon beyond the order dated 28.4.1993 which specifically states that “this order shall be considered as discharge simplicitor”. According to him provisions of section 25F of the Act are not complied with and condition precedent to retrenchment of workman are not complied with. Mr. Jani pointed out that the Labour Court has recorded the finding that

the employer has not complied with the conditions of Section 25F of the Act.

5.2 He submitted that the respondent has not been gainfully employed at any time from the date of termination till the award of the Labour Court and till the workman has reached the age of superannuation.

5.3 Mr.Jani submitted that the that the respondent workman was ready and willing to resume duties, but the petitioner even after the award passed by the Labour Court did not allow the respondent to resume duty subject to the rights of the parties. He submitted that with the passage of time he has reached the age of superannuation and therefore it is not open to the petitioner to state that no back wages may be granted or there may be a deduction or reduction in the award of back wages.

5.4 He submitted that the financial capacity of the petitioner is very sound and therefore on this ground the benefits cannot be denied to the petitioner. Mr. Jani pointed out that the alleged misconduct has not been the ground for termination of the services of the respondent, as the

same is not reflected in the order of termination.

5.5 Mr. Jani further submitted that if the petitioner had terminated the services of the respondent workman on any alleged misconduct, it was incumbent upon the petitioner to hold departmental enquiry and pass the orders after following the principles of natural justice. Admittedly no departmental inquiry is held by the petitioner at any point of time and therefore the order of termination is erroneous and bad in law. He pointed out that even account to the petitioner the order of termination is simplicitor.

6.0 Mr. Jani has relied upon the following judgements wherein the Apex Court has awarded reinstatement by holding that the retrenchment is inoperative and non-existent in the eye of law.

[a] State of Bombay Vs. Hospital Mazdoor Sabha, reported in AIR 1960 SC 610.

[b] Mohanlal Vs. Bharat Electronics Ltd, reported in AIR 1981 SC 1253. This decision stated that where pre-requisite for valid retrenchment as laid down in Section 25F has not been complied with,

retrenchment bringing about termination of service is ab initio void.

[c] Hindustan Steel Limited Vs. The Presiding Officer, Labour Court, Orissa, reported in 1977 SC 31 wherein it is held that once Section 25F is not followed, Labour Court was justified in awarding reinstatement with full back wages.

[d] Delhi Cloth and General Mills Company Ltd. Vs. Shambunath Mukherji and others, reported in AIR 1978 SC 8. In this case it is held that non-compliance of mandatory provisions of Section 25F of the Industrial Disputes Act renders the order invalid.

[e] State Bank of India Vs. C.N. Sundarraman, reported in 1976 SC 1111 wherein scope and parameters of section 25F of the Act were discussed.

7.0 As a result of hearing and perusal of the record it is found from the record that the order of termination is simplicitor.The Labour Court found that no chargesheet has been issued to the respondent and no inquiry has been conducted against the respondent. It is also

established that before the Labour Court no separate application has been filed by the petitioner to conduct an inquiry.

7.1 The Labour Court further found that there is violation of the provisions of section 25F of the Act. The petitioner has not explained the reason why the petitioner was discharged from service. Ultimately the Labour Court found that the petitioner had with an intention to remove the petitioner from his post passed the order in question. There is a clear finding that the petitioner has not followed the proper procedure. It is further found that the petitioner was not gainfully employed anywhere and the petitioner has failed to prove contrary to the said fact. Under these circumstances the impugned award came to be passed.

7.2 As regards the alleged misconduct is concerned, the only allegation is that the respondent has abused his superior officer in the office premises and used filthy languages in presence of various employees. It is on this ground the order of termination was passed without any inquiry.

7.3 Even if it is taken to be true that the respondent has misbehaved with his superior, then also,I am of the view that the termination in

simplicitor is an extreme step. There is nothing to suggest that the respondent was in the habit of abusing all his superiors or other co-employees.

7.4 At first it is required to be noted that no inquiry was conducted to prove the case of the petitioner. Secondly it was open to the petitioner to impose any other punishment upon the respondent for his alleged misconduct. Merely acceptance and encashment of the cheque would not give any benefits to the petitioner to justify the termination without any inquiry.

7.5 As regards the contention that the respondent was serving as a Superintendent and therefore he was not a workman, the Labour Court found that he was not working as Superintendent, but he was working as Accountant. This finding could not be controverted by the petitioner.

7.6 On the facts and circumstances and looking to the alleged misconduct, the contention of the petitioner that since the respondent has been discharged simplicitor there was no question of any charge-sheet being drawn or formal enquiry is being required to be held against the respondent cannot be accepted.

7.7 On the facts of the case, I am of the view that the petitioner cannot terminate an employee on mere allegation without conducting an inquiry and proving the same. It is required to be noted that the alleged misconduct has not been the ground for termination of the services of the respondent as the same is not reflected in the order of termination.

7.8 I am of the view that if the petitioner had terminated the services of the respondent workman on any misconduct, then it was incumbent upon the petitioner to hold departmental inquiry in order to comply with the provisions of natural justice. This was not done in the present case especially when the petitioner itself stated that the order of termination is simplicitor.

7.9 I am of the opinion that the judgements cited by the learned counsel for the petitioner regarding loss of confidence and lumpsum payment have no application as the present is one where there is a discharge simplicitor.

7.10 The ratio laid down in the case of Hyderabad Roadways (supra) will not be applicable to the facts of the present case as in that case the

workman was being employed on a temporary basis, he was not a permanent workman, he had worked only for an year with number of break in service and that he had raised the dispute in the year 1991 and the reference was made in the year 1997.

7.11 Looking to the particular facts of the case, especially the fact that the respondent was dismissed from service as a discharge simplicitor on mere allegation of misconduct I am of the view that the ratio laid down in the decisions cited by the petitioner are not applicable to the case on hand.

8.0 It is reported that the respondent has already attained the age of superannuation on 31.10.2003. Therefore there is no question of any reinstatement in service. As per the calculation of the respondent there is an outstanding to the tune of Rs.32,87,619. The service of the respondent has been terminated on the ground of misconduct of abusing his superior officer and using filthy language. The respondent had encashed the cheque given towards 30 days' notice pay in April 1993 and the dispute has been raised in the month of September 1993. The aforesaid aspects were not considered by the Labour Court. However, remand of the matter will not be in the interest of the

respondent as he has already attained the age of superannuation. Therefore, instead of considering the case of grant of reinstatement, retirement benefits, etc., on the overall facts of the case, I am of the view that interest of justice would be met if the respondent is paid retirement dues as if he was in service without back wages. I am further of the view that the respondent be paid Rs.1000/- per month during the intervening period. He has not worked for 127 months. Therefore the total amount would come to Rs.1,27,,000/-. Over and above this amount the respondent shall be entitled to get gratuity, PF and other retirement dues.

9.0 Accordingly the respondent shall be paid a sum of Rs.1,27,000/- plus his retirement dues like gratuity, PF, etc. as if he was in service. The petitioner shall be entitled to deduct the amount of loan amount if any taken by the respondent. The award of the Labour Court is substituted accordingly. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

ar